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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FILED/ACCEPTED  
SEP 11 2007  
Federal Communications Commission  
Office of the Secretary

In the Matter of	)	EB Docket No. 07-147
	)	
<b>PENDLETON C. WAUGH, CHARLES M. AUSTIN, and JAY R. BISHOP</b>	)	File No. EB-06-IH-2112
	)	NAL/Acct. No. 200732080025
	)	
<b>PREFERRED COMMUNICATION SYSTEMS, INC.</b>	)	FRN No. 0003769049
	)	
	)	
Licensee of Various Site-by-Site Licenses in the Specialized Mobile Radio Service.	)	
	)	
<b>PREFERRED ACQUISITIONS, INC.</b>	)	FRN No. 0003786183
	)	
	)	
Licensee of Various Economic Area Licenses in the 800 MHz Specialized Mobile Radio Service	)	

To: The Honorable Judge Arthur I. Steinberg

**ENFORCEMENT BUREAU'S OPPOSITION TO PETITION TO INTERVENE  
OF CHARLES D. GUSKEY**

1. The Enforcement Bureau ("Bureau"), pursuant to Sections 1.4, 1.45 and 1.223 of the Commission's Rules, 47 C.F.R. §§ 1.4, 1.45 and 1.223, hereby requests the Presiding Administrative Law Judge to deny the Petition to Intervene (the "Petition") submitted by Charles D. Guskey. In support whereof, the following is shown.

2. On July 20, 2007, the Commission released *Pendleton C. Waugh, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, FCC 07-125 (July 20, 2007) ("OSC"). The OSC designated the above-captioned proceeding for hearing, and required that captioned individuals and entities should file their written appearances within 30 calendar days of the OSC's release.

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3. On July 26, 2007, in *Pendleton C. Waugh, et al.*, Order, FCC 07M-26, the Chief Administrative Law Judge assigned this proceeding to the Presiding Administrative Law Judge, and scheduled a prehearing conference for September 12, 2007.

4. On August 1, 2007, in FR Doc. E7-14876, the Commission published a summary of the order.<sup>1</sup> The notice provided that “[p]etitions by persons desiring to participate as a party in the hearing, pursuant to 47 CFR 1.223, may be filed no later [sic.] August 31, 2007.”<sup>2</sup>

5. On August 17, 2007, the Commission received written notices of appearance from Charles M. Austin, Pendleton C. Waugh, Preferred Communication Systems, Inc. (“PCSI”), and Preferred Acquisitions, Inc. (“PAI”). On August 21, 2007, the Commission received a written notice of appearance from Jay R. Bishop.

6. On August 31, 2007, the Commission received the Petition filed by Charles D. Guskey.<sup>3</sup> Mr. Guskey seeks status as either: (1) a party in interest who should have been named in the order, pursuant to 47 C.F.R. § 1.223(a); or (2) in the alternative, as a party that may participate in the proceeding, pursuant to 47 C.F.R. § 1.223(b).<sup>4</sup> Mr. Guskey explains that the Petition is based, in part, on a purported financial interest in excess of \$1,000,000 as a creditor of PCSI and its subsidiary PAI.<sup>5</sup> Mr. Guskey also claims that he has been involved in the companies’ affairs in relation to development of business plans for certain operations, strategic acquisition, discussions with potential joint

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<sup>1</sup> See *Pendleton C. Waugh, Charles M. Austin, and Jay R. Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc. – Order to Show Cause and Notice of Opportunity for Hearing*, Notice, 72 Fed. Reg. 42088 (2007) (“Notice”). This summary was subsequently corrected on August 10, 2007, due to an incorrect docket number provided in the original publication. See *Pendleton C. Waugh, Charles M. Austin, and Jay R. Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc. – Order to Show Cause and Notice of Opportunity for Hearing*, Notice; correction, 72 Fed. Reg. 45049 (2007).

<sup>2</sup> See Notice at 42088.

<sup>3</sup> See Petition to Intervene, EB Docket No. 07-147, dated August 30, 2007.

<sup>4</sup> See *id.* at 2.

venture partners, equipment acquisition and deployment, discussions with the companies' principal financing source, and involvement in Commission proceedings pertaining to rebanding of the 800 MHz frequencies as that proceeding impacts the companies.<sup>6</sup>

Although Mr. Guskey states that "revocation of Preferred's licenses (its only substantive asset) and/or substantial forfeitures will be financially devastating"<sup>7</sup> for him, he asserts that his interests will not be adequately represented by PCSI and PAI because of a "falling-out" he had with the companies over two years ago.<sup>8</sup>

7. The Bureau respectfully opposes Mr. Guskey's Petition on two grounds. First, the Petition is procedurally defective in that it was not properly served on all of the parties to this proceeding. Section 1.211 of the Commission's Rules, 47 C.F.R. § 1.211, requires that, "[e]xcept where expressly provided . . . all pleadings filed in a hearing proceeding shall be served upon all other counsel in the proceeding, or, if a party is not represented by counsel, then upon such party." The certificate of service accompanying Mr. Guskey's Petition indicates that the pleading was only served on Hillary S. DeNigro, the Chief of the Bureau's Investigations and Hearings Division. Pursuant to Section 1.211, however, Mr. Guskey was required to serve copies of his pleadings not only on the Bureau but also on all other counsel in the proceeding, or parties, if not represented by counsel, which here would include PCSI, PAI, Charles M. Austin, Pendleton C. Waugh, and Jay R. Bishop. Mr. Guskey has not demonstrated that he served a copy of his petition on these parties.

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<sup>5</sup> See *id.*

<sup>6</sup> See *id.* at 2-3.

<sup>7</sup> See *id.* at 2.

<sup>8</sup> See *id.* at 4.

8. Second, the Petition is substantively defective in that it does not meet the stringent standards required for third party intervention under the Commission's Rules. Section 1.223 of the Commission's Rules, 47 C.F.R. §1.223, governs petitions to intervene. Under Section 1.223(a), a person may seek intervention as a matter of right as a party in interest "in cases involving applications for construction permits and station licenses, or modifications or renewal thereof,"<sup>9</sup> by timely "filing, under oath . . . a petition for intervention showing its basis for interest."<sup>10</sup> Commission precedent is clear, however, that Mr. Guskey may not seek intervention under Section 1.223(a) in *revocation* proceedings like the instant one.<sup>11</sup> Thus, subsection (a) of the rule does not provide a basis for Mr. Guskey's intervention as a party in interest.

9. Under Section 1.223(b), a party may seek permissive intervention by timely filing a petition, that demonstrates certain conditions are satisfied:

The petition must set forth the interest of petitioner in the proceedings, must show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition.<sup>12</sup>

In such cases the Presiding Administrative Law Judge "in his discretion, may grant or deny such petition or may permit intervention by such persons limited to a particular stage of the proceeding."<sup>13</sup>

10. The Petition fails to provide a basis to intervene as a party under Section 1.223(b) of the Commission's Rules, because it fails to show how Mr. Guskey's

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<sup>9</sup> 47 C.F.R. § 1.223(a).

<sup>10</sup> *Id.*

<sup>11</sup> See *Victor Muscat*, Memorandum Opinion and Order, 31 FCC 2d 620 (1971) (holding that parties may not seek intervention under Section 1.223(a) in revocation proceedings).

<sup>12</sup> See 47 C.F.R. § 1.223(b).

“participation will assist the Commission in the determination of the issues in question”<sup>14</sup> or to “set forth any proposed issues in addition to those already designated for hearing.”<sup>15</sup> As the Commission has recognized, intervention under Section 1.223(b) of its Rules is a matter of privilege, not of right.<sup>16</sup> Although, Mr. Guskey may be a creditor of PCSI and PAI with some knowledge of the companies’ financial affairs, his interests and expertise are, at best, similar to those of the parties already participating in the proceeding. It is the Bureau’s understanding that, unlike the other parties, however, Mr. Guskey apparently has no current ownership interest in PCSI or PAI.<sup>17</sup> Commission precedent is clear that simply being a creditor alone does not support intervention as a discretionary intervenor.<sup>18</sup> More importantly, Mr. Guskey has not even alleged, much less demonstrated that, if he is not allowed to intervene, substantial issues of law or fact will not be adequately raised or argued.<sup>19</sup> He offers no new issues for consideration in the hearing nor any unique contribution to the issues already designated that he could not offer as a fact witness.<sup>20</sup> To the contrary, adding Mr. Guskey as a party is likely to delay the outcome of the proceeding through additional pleadings and discovery requests

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<sup>13</sup> See *id.*

<sup>14</sup> 47 C.F.R. § 1.223(b).

<sup>15</sup> See *id.*

<sup>16</sup> See *Victor Muscat*, Memorandum Opinion and Order, 31 FCC 2d 620 (1971).

<sup>17</sup> Further, Mr. Guskey neither claims nor asserts in his pleading that he has any ownership interest in PCSI or PAI. Even, assuming *arguendo*, that he had such a financial interest in the companies, such interest does not, alone, pursuant to Section 1.223(b), qualify as a basis for full-blown party status.

<sup>18</sup> See *Hertz Broadcasting of Birmingham, Inc.*, Memorandum Opinion & Order, 46 FCC 2d 350 (Review Board 1974) (citing *Middle Georgia Broadcasting Co.*, 32 FCC 2d 974 (1972) (subsequent history omitted) (affirming denial of intervention to a creditor that had not shown that its presence would advance resolution of the issues and would appear only to preserve the creditor’s financial interest).

<sup>19</sup> See *id.* (denying intervention to a party that did not demonstrate that its participation would set forth new grounds not already under consideration).

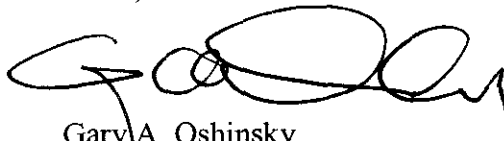
<sup>20</sup> See *William L. Zawila*, Memorandum Opinion & Order, EB Docket No. 03-152 (Dec. 8, 2003) (ALJ Steinberg) (subsequent history omitted) (denying intervention because movant did not possess any information that he alone offered that would be necessary for development of a full and complete record, nor did he show that the information which he possessed could not be made available through use of the movant as a fact witness).

repetitive of those filed by other parties. Mr. Guskey's interest for the purposes of this proceeding is simply to guard his position as a creditor, by acting to keep the licenses from being revoked and prevent forfeitures from being issued. Arguments on those subjects can be expected to be fully raised by the real parties in interest already named in this proceeding. Therefore, allowing Mr. Guskey to participate as an intervenor would be contrary to precedent and any such participation would only be redundant and cause delay.

13. For the foregoing reasons, the Bureau respectfully requests that the Presiding Administrative Law Judge deny Mr. Guskey's petition to intervene.

Respectfully submitted,

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September 11, 2007

## CERTIFICATE OF SERVICE

Kerri Johnson, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 11th day of September, 2007, sent by first class United States mail copies of the foregoing "Enforcement Bureau's Opposition to Petition to Intervene of Charles D. Guskey" to:

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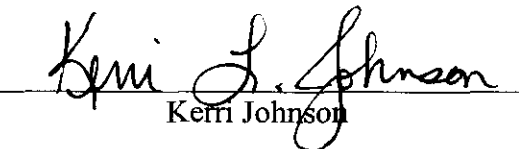
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